

EX PARTE OR LATE FILED



Building The
Wireless Future™

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July 12, 1996

CTIA

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RECEIVED

JUL 12 1996

Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: **Ex Parte Presentation**
CC Docket No. 95-185 (Interconnection Between Local
Exchange Carriers and Commercial Mobile Radio
Service Providers) and **CC Docket No. 96-98**
(Implementation of the Local Competition Provisions in
the Telecommunications Act of 1996)

Dear Mr. Caton:

On Friday, July 12, 1996, the attached CTIA White Paper, "Reciprocal Termination is Not An Unconstitutional Taking" and related cover letter, were delivered to FCC Chairman Reed E. Hundt, Commissioner James H. Quello, Commissioner Susan Ness, Commissioner Rachelle B. Chong and the Commission employees listed below:

Rosalind Allen
Lauren Belvin
James Casserly
James Coltharp
Joseph Farrell
Pamela Greer
Regina Keeney
Edward Krachmer
Jane Mago
Pamela Megna
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Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Roche", written in a cursive style.

Robert F. Roche

Attachments

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JUL 12 1996

Federal Communications Commission
Office of Secretary

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
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Randall S. Coleman
Vice President for
Regulatory Policy and Law

Re: Ex Parte Presentation
CC Docket No. 95-185 (Interconnection Between Local
Exchange Carriers and Commercial Mobile Radio
Service Providers) and **CC Docket No. 96-98**
(Implementation of the Local Competition Provisions in
the Telecommunications Act of 1996)

Dear Mr. Chairman:

The attached CTIA White Paper, "Reciprocal Termination is Not An Unconstitutional Taking," demonstrates that reciprocal termination is a permissible exercise of Commission jurisdiction, and that it does not constitute a taking. In fact, the paper demonstrates that reciprocal termination:

1. compensates the carriers involved;
2. does not reduce the value of LEC investments;
3. actually increases the value of the network; and
4. substantially benefits the public and the carriers.

Thus, reciprocal termination conforms with the state of the law regarding permissible regulation, while promoting the FCC's overriding goal of maximizing the benefits of telecommunications for American consumers.

Once again, CTIA urges you to consider the attached information in reaching your decisions in the referenced proceedings.

Sincerely,


Randall S. Coleman

Attachment



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LEC-CMRS Interconnection WHITE PAPER No. 3 First Series

RECIPROCAL TERMINATION IS NOT AN UNCONSTITUTIONAL TAKING

July 12, 1996

RECIPROCAL TERMINATION IS NOT AN UNCONSTITUTIONAL TAKING

Some LECs oppose the FCC's reciprocal termination (or "bill and keep") proposal as an unconstitutional taking without compensation. It is ironic that LECs, who have used "bill and keep" to exchange calls among themselves for decades, have raised this argument. They know from experience that bill and keep is compensatory and has permitted their networks to grow and prosper.

They also know that if there is a taking, it is the *status quo*. For more than ten years the LECs have charged anywhere up to 16 cents a minute for terminating wireless traffic while paying nothing for connecting their calls to wireless networks. The FCC issued its proposal because it is concerned that the LECs' superior market position and the excessive interconnection fees are impeding the growth of the wireless market. Absent the FCC's proposal, the LECs' uncompensated taking from wireless carriers and users will continue.

Courts look at the following three factors to determine whether an impermissible taking has occurred: (1) the economic impact of the regulation; (2) the extent of interference with investment-backed expectations; and (3) the character of the government action. Each of these three factors weighs heavily in favor of the propriety of the FCC's proposal.

THE RULE WILL HAVE LITTLE OR NO ECONOMIC IMPACT ON THE LECs

An unconstitutional taking occurs when governmental action results in the deprivation of "all economically beneficial or productive use" of private property. As set forth below, the economic impact, if any, from reciprocal termination will be *de minimis*. Even if there is a minor cost associated with terminating wireless traffic, the LECs still will retain the uncompromised ability to use and exploit their networks.

Reciprocal Termination is Not a Taking: Economic experts uniformly agree that it costs LECs next to nothing to terminate traffic. Reciprocal termination merely provides an interconnection model which reflects that fact. Clearly there cannot be a taking where nothing is being taken.

The economic impact is further reduced by the fact that the FCC has merely suggested reciprocal termination as an interim measure. The NPRM does not amount to a permanent physical invasion of anyone's property. In 1987, the FCC ordered that wireless and wireline carriers must provide one another mutual compensation for switching services.¹ The FCC's proposal is a well-reasoned, temporary solution to the lack of mutuality which currently exists. Reciprocal termination maximizes the value and efficiency of both wireless and wireline networks, while adopting an interconnection pricing method which is closer to the real cost of termination than the current method.

¹See Declaratory Ruling, *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 63 RR 2d (P&F) 7, 22 (1987), *aff'd and clarified on recon.*, 4 FCC Rcd. 2369 (1989).

It is quite possible that reciprocal termination will save the LECs money. Several economists believe that the administrative costs associated with tracking and billing for termination costs exceed the actual cost of terminating wireless traffic. Without the FCC's proposal, these administrative costs will grow substantially as wireless and wireline carriers across the country battle over the "right price" for interconnection before the FCC and the courts. The constituency that will suffer will be wireless and wireline users who will have to bear the costs of these never-ending battles. Reciprocal termination nips this problem in the bud.

Reciprocal Termination Compensates the Carriers: Most importantly, even if reciprocal termination constitutes a government taking, the LECs are more than adequately compensated for the use of their networks. Although no money changes hands, this does not mean that termination services are given away free. In order to receive termination services, a carrier must accept the obligation of providing termination for the other carrier's traffic. The Washington Utilities and Transportation Commission ("WUTC") has ruled that "bill and keep is not a system of interconnection for free. Bill and keep is compensatory. There is a reciprocal exchange of traffic in which each company receives something of value."² As the WUTC also pointed out: "That bill and keep is a fair compensation method is evident from the fact that it is the dominant current practice between adjacent LECs around the country."

The LECs contend reciprocal termination is unfair because they generate far more calls to wireless users than vice versa. The brief history of Sprint Spectrum, the first provider of PCS services in the United States, demonstrates that this situation is not forever fixed. Sprint Spectrum offers its customers a variety of services which encourages them to give out their phone numbers and accept calls. As a result, traffic to and from Sprint Spectrum's users and Bell Atlantic wireline users is nearly even. Clearly, reciprocal termination would not result in a windfall for Sprint Spectrum.

THE RULE DOES NOT INTERFERE WITH THE LECs' INVESTMENT-BACKED EXPECTATIONS

Reciprocal Termination Does Not Reduce the Value of LEC Investments: Reciprocal termination does little if anything to diminish the value of the LECs' investment in their networks. In fact, contrary to the sky-is-falling predictions of the LECs, reciprocal termination provides wireless and wireline carriers an opportunity to increase usage and thereby increase profits.

Reciprocal Termination Increases the Value of the Network: In fact, by adopting reciprocal termination the LECs get something far more value, the opportunity to encourage and charge for calls from their network to wireless users. Reciprocal termination creates incentives for both carriers to generate more cross-network calls and thereby use their networks more efficiently. The LECs, with phones in almost every home and business, will be able to generate

²*Washington Utilities and Transportation Commission, et al v. U S WEST Communications, Inc.*, Docket Nos. UT-941464, UT-941465, UT-950146 and UT-950265, October 31, 1995, at 36, *aff'd sub nom U S WEST Communications, Inc. v. Washington Util. & Transportation Comm'n*, Case No. 96-2-00177-5 SEA (Wash. Sup. Ct. King County, adopted January 23, 1996).

far more income by creatively encouraging their customers to make calls to wireless users. For example, the LECs could begin offering Calling Party Pays, wireless directory listings, and call completion.

Moreover, in a number of states which have adopted reciprocal termination (also known as "mutual traffic exchange"), provision has been made for a retrospective determination of traffic balance, with an eye to a possible true-up in the event that any gross disparity exists.

Lastly, many of the LECs have substantial investments in prominent cellular and PCS providers. Clearly, their expectation is to maximize the value of these investments. Reciprocal termination is the way to do it.

THE RULE SUBSTANTIALLY BENEFITS THE PUBLIC AND THE CARRIERS

The FCC's overriding goal in proposing reciprocal termination is to maximize the benefits of telecommunications for American consumers. The proposed rule will do just that. For example, by erasing unfair interconnection charges, reciprocal termination should immediately reduce the cost of wireless services by as much as 10%.

Reciprocal termination also will eliminate a crucial barrier to the growth of PCS and other new wireless services. Eliminating burdensome interconnection costs will encourage new entrants to wireless markets and spur them and existing carriers to build out their systems more rapidly. This increased competition will bring additional downward pressure on prices. For examples, Sprint Spectrum already offers more services and lower prices than its cellular competitors.

Finally, reciprocal termination is a crucial first step toward real local loop competition. Wireless has the potential to become an attractive alternative to the LECs for local service, but it cannot do so when the average wireless customer must pay \$36 in LEC interconnection charges alone for the same usage which costs a wireline user a total of \$19. Take away these connection charges, and wireless can become the first potential market-wide competitor to the LECs if they make the appropriate network expansion.

The LECs, of course, dread competition. Their fears, however, are misplaced. As has happened repeatedly throughout the history of the communications industry, competition will benefit the entire industry. Despite their opposition: newspapers flourished after the advent of radio; radio thrives alongside television; AT&T continues to grow along with its long distance competitors, and so on. Faced with competition, the incumbents rose to the task and actually improved performance. The same thing should happen here. Competition is a great stimulant of investment and innovation, as Congress recognized in the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996. Under the spur of competition, cellular companies have invested more than \$24 billion since 1983, and real service rates have fallen by 35%. The wireless market is still growing by leaps and bounds. Subjected to competition, the LECs' growth and performance will accelerate as well.